IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1331 OF 2002

The State of Maharashtra Applicant
vs.
1. Shripad Ramchandra Kulkarni & 28 ors. Respondents

Ms.V.R.Bhonsale, Addl. Public Prosecutor for the State.

Ms.Rupali Bhosale i/b. Ms.Manisha Patil for respondents 2 to 8, 10 to 25 and 27 to 29.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 3rd March 2005

P.C.

Since the application for condonation of delay in respect of respondent no.26 has been dismissed for want of prosecution, this criminal appeal stands dismissed against respondent no.26.

2. By a separate order passed by us we have condoned the delay in filing the criminal appeal in so far as other respondents are concerned.

3. We heard the learned Additional Public Prosecutor and considered the prosecution evidence referred to by her.

4. On Dassera day i.e. 17.10.1991, the procession of palkhi started from the house of Ravindra Anant

Vinjanekar (original accused no.1 - since deceased). On the way riot took place between the two groups i.e. the group of Narayan Nagoji Pawar (PW-3) and the group of accused persons. The group of PW-3 pelted stones. The original accused no.1 Ravindra Anant Vinjanekar rushed towards his house, bolted himself from inside and then fired from the window. In the riot one Shanutai Subrao Jadhav died and Nagoji Pawar and Parvati Tibile got injured. The accused persons, in all 33, were put up for trial for the offences punishable under Section 302 r/w 149, 307 r/w 149, 147, 148, 337 r/w 149, 427 r/w 149, 503 r/w 149 and 506 r/w 149 IPC. The original accused nos. 1, 21, 31 and 33 died during the pendency of trial and, thus the trial abated as against them.

5. The material evidence is the evidence of Najir Bagwan (PW-12). On the date of incident he was posted as police sub Inspector, Police Station, Chandgad. He admitted in his cross-examination that group of Narayan Pawar (PW-3) pelted stones heavily at Palkhi. He also admitted that PW-3 and his companions were booked for riot. PW-12 admitted that original accused no.1-Ravindra Anant Vinjanekar fired from his pistol in his self-defence. As a result of firing by Ravindra (original accused no.1) rioters dispersed. PW-12 during investigation also found stones lying on the roof of wada belonging to A1 and also found blood stains inside

the wada. On the careful consideration of the evidence of PW-12, we are in agreement with the view of the learned trial Judge that prosecution failed to establish that common object of unlawful assembly was to cause homicidal death of Shanubai Jadhav or unlawful assembly in furtherance of its common object attempted to commit murder of Nagoji Pawar and Parvati Tibile.

6. The evidence of PW-2 and PW-3 cannot be relied safely on the face of evidence of PW-12.

7. There is no evidence of provocation by the accused persons.

8. All in all, we find that the consideration of the evidence by the trial Court does not suffer from any legal infirmity or perversity. The trial court's view is reasonably possible.

9. Criminal appeal is, accordingly, rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)